

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1902.

No. 1150.

120

ROSE R. WHYTE AND THOMAS D. WHYTE, APPELLANTS,

vs.

GEORGE SPRANSY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 12, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1902.

No. 1150.

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In the Court of Appeals of the District of Columbia.

ROSE R. WHYTE ET AL., Appellants,
vs.
GEORGE SPRANSY.

No. 1150.

a Supreme Court of the District of Columbia.

GEORGE SPRANSY, Complainant,
vs.
 ROSE R. WHYTE and THOMAS D. WHYTE,
 Defendants. } No. 22650. In Equity.

UNITED STATES OF AMERICA, } ss :
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill for Injunction.*

Filed October 1, 1901.

In the Supreme Court of the District of Columbia.

GEORGE SPRANSY, Complainant,
vs.
 ROSE R. WHYTE and THOMAS D. WHYTE,
 Defendants. } In Equity. No. 22650,
 Docket 51.

Your complainant, George Spransy, respectfully shows unto the court as follows:

1. That he is a citizen of the United States and a resident of the District of Columbia, and brings this suit in his own right.

2. That *that* defendants, Rose R. Whyte and Thomas D. Whyte, are citizens of the United States and residents of the District of Columbia, and are sued as hereinafter mentioned.

3. That heretofore, to wit, on or about August 25th, 1892, the said defendant, Rose R. Whyte, being a married woman and possessed of sole and separate property, desired to secure a loan on said property, which said loan was made to her by one Joseph R. Spransy, and to secure the payment of the same the said defend-

ants, Rose R. Whyte and Thomas D. Whyte, her husband, executed a deed of trust on certain property belonging to the said defendant, Rose R. Whyte, as her sole and separate estate; that said deed of trust was executed by the said defendants and bears date August 25, 1892, the same being made to secure the said Joseph R.

2 Spransy in the sum of eight thousand dollars (\$8,000), said indebtedness being evidenced by the joint and several promissory notes of the said defendants, one of said notes being for the sum of five thousand dollars (\$5,000), dated August 25, 1892, payable three years after date, with interest at six per cent., and the other of said notes being for the sum of three thousand dollars (\$3,000), said note bearing date August 25, 1892, and payable five years after date, with interest at six per cent., interest on both notes being payable semi-annually; that said deed of trust mentioned aforesaid was duly executed and delivered to one Samuel Cross, who was named as trustee therein, and was duly recorded on said 25th day of August, 1892, in Liber 1713, folio 377 *et seq.*; that both of said defendants signed the said deed of trust and the said notes aforesaid. Said original trust is filed herewith and marked Exhibit "A" and prayed to be taken as a part hereof and read at the hearing of this cause the same as if fully set out herein.

4. That from said date of said trust until August, 1899, the said defendants, Rose R. Whyte and Thomas D. Whyte, or some one of them, paid the interest on said notes, but no part of said principal was by them paid, and said notes were at that time overdue; that thereafter the said principal of said notes being overdue and interest being overdue from the 25th day of August, 1899, the said party secured by said deed of trust and owner of note, being of this time your complainant, instructed the trustee mentioned in said deed of trust to sell said property according to the terms mentioned in said trust, and that thereafter the said property was duly advertised in the Evening Star by the said trustee, Samuel Cross, and was, on the 17th day of

3 August, A. D. 1901, sold to your complainant for the sum of ten thousand dollars (\$10,000), he being the highest bidder therefore. A copy of said advertisement, together with a statement of the said sale by the auctioneer, is herewith filed and made a part of this bill, the same being marked Exhibit "B" and prayed to be read at the hearing of this cause, the same as if fully set out herein; that thereafter the said trustee, to wit, on September 4th, A. D. 1901, duly executed a deed for said property in fee-simple to your complainant, and your complainant then and there by virtue of said deed became possessed of the fee-simple title to said property and all of the right, title, and interests of the said defendants to the same, and your complainant was on said day and now is the owner of the legal title to the property described herein and is entitled to the possession and control thereof and the rents, issues, and income arising therefrom. Said original deed made by said trustee, Samuel Cross, is filed herewith, marked Exhibit "C," and made a part of this bill, the same as if fully set out herein, the same being recorded in Liber 2602, fol. 194 *et seq.*

5. That notwithstanding the fact that your complainant is the owner of the said property in fee-simple and the owner of all the right, title, and interest of the defendants to this suit in said property, the said defendants refused to give your complainant possession of the same. Your complainant avers that the said defendant, Rose B. Whyte, is in possession of said premises at the present time, and that the said defendant, Thomas D. Whyte, her husband, is living with her in said premises; that your complainant has
4 made repeated demands upon the said defendant, Rose R. Whyte, and the said defendant, Thomas D. Whyte, for the possession of said premises, but they have refused and still refuse to surrender the same, and that thereafter, on the first day of October, A. D. 1901, your complainant filed an ejectment suit in the supreme court of the District of Columbia, on the law side thereof, in which said suit your complainant asks for judgment for the recovery of the said premises, the same being at law, No. 44961; that said suit cannot be tried at the present term of the court, and on account of the number of cases on the law calendar of said court said case cannot be tried for a period of at least six months, and possibly a year or more.

6. Your complainant avers and charges that the said defendant Rose R. Whyte, and the said defendant, Thomas D. Whyte, are wholly insolvent and possessed of no real or personal property in said District of Columbia out of which a judgment for mesne profits could be satisfied, and that, knowing this, they have refused to give up possession of said property to your complainant unless he pay to them or either of them a large sum of money as a bonus for their moving from said property; that according to complainant's knowledge and belief the said Thomas D. Whyte has no money or property out of which a judgment against him could be satisfied; and, further, that the said Rose Whyte besides being insolvent is a married woman, and it is doubtful whether a recovery of damages can be had against her for the tort alleged in the declaration in ejectment, she not having at the present time any sole or separate estate, and said tort,
at the time the same was committed, did not grow
5 out of any wrong committed by her by reason of her ownership of a sole and separate estate; also, that said defendants failed for two years to pay interest on said trust, and also did not pay any taxes on said property for four years, and permitted said property to be sold for taxes, so that your complainant had to pay out one hundred dollars (\$100) bonus to redeem said property, and also had to pay taxes for four years, said taxes and cost of redemption, besides bonus, amounting to five hundred eighty-seven dollars and two cents (\$587.02), said bills and redemption certificate being filed herewith and marked Exhibit "D."

Therefore, on account of the facts heretofore mentioned, your complainant is without remedy save in this honorable court.

Wherefore, the premises considered, your complainant prays:

1.

That the United States writ of subpoena be issued to the said defendants, Rose R. Whyte and Thomas D. Whyte, commanding them and each of them to appear in this honorable court and answer the exigencies of this bill.

2.

That this honorable court will appoint a receiver or receivers to take charge of, manage, preserve, and control the property mentioned in this bill, and collect, receive, and hold the rents, issues, and profits arising from the said property pending the ejectment suit above referred to or until further order of this court.

3.

That your complainant may have such other and further relief as the nature of his case may require.

6 The defendants to this bill are Rose R. Whyte and Thomas D. White.

GEORGE SPRANSY.

J. J. DARLINGTON,
LAMBERT & BAKER,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, ss:

I, George Spransy, being first duly sworn, on oath depose and say that I have read the foregoing bill of complaint by me subscribed and know the contents thereof; that the matters and things therein stated of my own personal knowledge are true, and those stated upon information and belief I believe to be true.

GEORGE SPRANSY.

Subscribed and sworn to before me this 1st day of October, A. D. 1901.

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS, *Ass't Cl'k.*

7

Filed October 1, 1901.

In the Supreme Court of the District of Columbia.

GEORGE SPRANSY, Complainant,	}	Equity. No.—.
<i>vs.</i>		
ROSE R. WHYTE and THOMAS D. WHYTE, De- fendants.		

DISTRICT OF COLUMBIA, ss:

Samuel Cross, being duly sworn, deposes and says that he is the Samuel Cross mentioned in the deed of trust made by Rose R. Whyte and Thomas D. Whyte, her husband; that he is the trustee

in said deed of trust, and that as such trustee has personal knowledge of the loan and of the parties mentioned in said deed of trust; that the interest on said trust was last paid on August 25, 1899, and that since that day no interest has been paid; that Thomas D. Whyte before that time paid the interest on the notes, but since that day has represented on various occasions to affiant that he was not able to pay said interest, and neither he nor his wife had sufficient means to keep the interest paid on said trust; that time was given him in which to try to pay the interest, and also in which to try and sell the property, but that before the day of sale was made by affiant the defendant Thomas D. Whyte came to affiant and requested him to sell the property, and said that he was unable to pay the interest, unable to sell the property, and that the best thing to do with it was to sell it so that Mr. Spransy could get possession of it; that affiant learned that the taxes were not paid, and upon examination found that not only were the taxes due for some

8 years back, but that there had been a sale of the property for taxes; that said Thomas D. Whyte informed affiant that he and his wife were unable to pay the taxes on the property, and requested to redeem the tax sale; said that they had no money with which to redeem the same. Affiant, acting as trustee and for Mr. Spransy, was compelled to lay out money to redeem the tax sale and had to pay a bonus of one hundred dollars to the purchaser; that out of the funds realized from the sale of the property taxes amounting to the sum of about five hundred eighty-seven dollars and two cents (\$587.02), besides the one hundred dollars (\$100) heretofore paid, were paid; that the defendant Thomas D. Whyte always represented to affiant that he was unable to pay the interest and had scarcely money enough to live upon; that his wife had no money or property and could not pay the interest and taxes on the property mentioned in the trust.

SAM. CROSS.

Subscribed and sworn to before me this 30th day of September, A. D. 1901.

[SEAL.]

JNO. C. ATHEY,
Notary Public, D. C.

DISTRICT OF COLUMBIA, ss:

George Spransy, being duly sworn, deposes and says that he is the complainant in a cause brought by George Spransy against Rose R. Whyte and Thomas D. Whyte; that he was the holder of the notes in the deed of trust mentioned at the time of the sale, and some time prior thereto, they belonging at first to his father, but that before his father's death he looked after said trust for him, and that he is well acquainted with both of them; that Thomas D. Whyte and the said Rose R. Whyte have been in arrears for interest on said trust mentioned in said bill since August, 1899; that they were given time to pay the interest, and that they always represented that they had not the money wherewith to pay

the same; that the said Thomas D. Whyte on several occasions asked affiant not to sell the property, but to wait awhile and see if he, Thomas D. Whyte, could not dispose of it; that he gave him time, and that thereafter the said Thomas D. Whyte informed affiant that he could not dispose of the property; that neither he nor his wife could pay the interest on the trust, and that the best thing to do was to sell it; that he had no money wherewith to meet the interest, and some time thereafter affiant discovered that said property had been sold for taxes, and also that taxes had been unpaid for several years; that he asked the said Thomas D. Whyte about the same, and that he admitted that no taxes had been paid and said that neither he nor his wife had had any money with which to pay them; that affiant — compelled to have added on to principal, interest, and costs of said trust the sum of six hundred eighty-seven dollars and two cents (\$687.02) for payment of taxes and redemption of tax sale; that by said sale the property did not bring sufficient to pay the amount due to affiant; that there was a four-thousand-dollar (\$4,000) second trust on said property made by the defendants to the bill.

Affiant further says that to the best of his knowledge, information, and belief the said defendants, Rose R. Whyte and
10 Thomas D. Whyte, are totally and wholly insolvent and have no property whatever in the District of Columbia or anywhere else out of which a judgment for mesne profits, if any should be obtained, could be satisfied.

Affiant further says that just about the time of said sale the said defendant, Thomas D. Whyte, talked to affiant about renting said property from him, but that thereafter he came to him and told him that neither he nor his wife would be able to pay rent if they made a contract for the same; that Thomas D. Whyte has an office in the Bond building, but nothing but office furniture is in said office.

GEORGE SPRANSY.

Subscribed and sworn to before me this 30th day of September, A. D. 1901.

[SEAL.]

JNO. C. ATHEY,
Notary Public, D. C.

DISTRICT OF COLUMBIA, ss:

D. W. Baker, being duly sworn, deposes and says that he is one of the solicitors for complainant and as such solicitor has examined the tax records and indexes in the recorder's office to see if there was any property in the name of either of the defendants in this cause; that the only property he could find in the District of Columbia belonging to affiants on said books was the property mentioned in this bill, which was assessed in the name of Rose R. Whyte; that the indexes for several years back showed no property conveyed to either of the defendants.

D. W. BAKER.

Subscribed and sworn to before me this first day of October, A. D. 1901.

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS, *Ass't C'k.*

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EXHIBIT "A."

Filed October 1, 1901.

This indenture, made this twenty-fifth day of August in the year of our Lord one thousand eight hundred and ninety-two by and between Rose R. Whyte and Thomas D. Whyte her husband, of the city of Washington in the District of Columbia parties of the first part and Samuel Cross of the same place party of the second part.

Whereas Rose R. Whyte and Thomas D. Whyte being justly indebted unto Joseph R. Spransy in the full sum of eight thousand dollars for which amount they have jointly and severally given, two certain promissory notes, of even date with these presents, one for the sum of five thousand dollars, payable in three years from the date, and one for the sum of three thousand dollars payable in five years from date, with interest at the rate of six per cent. per annum until paid, interest payable semi-annually, both of said note- being made payable to Joseph R. Spransy or order.

And whereas, the parties of the first part desire to secure the prompt payment of said debt, and the interest thereon, when and as the same shall become due and payable, together with all costs and expenses that may accrue thereon:

Now, therefore, this indenture witnesseth, that the parties of the first part, in consideration of the premises, and of one dollar lawful money to them in hand paid by the party of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released and conveyed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release and convey unto the party of the second part, his heirs and assigns, the following-described land and premises, situate in the city of Washington, District of Columbia, and designated as and being part of lot numbered four (4), in W. W. Corcoran's subdivision of square numbered two hundred and thirty-nine (239) as said subdivision is recorded in the office of the surveyor of the District of Columbia in Book W. F. page 142. Contained within the following metes and bounds, viz: Beginning for the same at the southwest corner of said lot, and running thence east along the line of North "R" street, twenty-five (25) feet, thence north ninety-five (95) feet, thence west twenty-five (25), and thence south ninety-five (95) feet, to the place of beginning, together with all and singular, the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity or otherwise however, of the parties of the first part, of, in, to or out of the said land and premises.

12

To have and to hold, the said land, premises and appurtenances unto and to the only use of the party of the second part his heirs and assigns.

In and upon the trusts, nevertheless, hereinafter declared; that is, in trust to permit said parties of the first part their heirs or assigns, to use and occupy the said described land and premises, and the rents, issues and profits thereof to take, have and apply
13 to and for their sole use and benefit, until default be made in the payment of the said promissory notes hereby secured or any instalment of interest thereon, when and as the same shall become due and payable, or any proper cost, charge, commission or expense in and about the same.

And upon the full payment of all of said notes and the interest thereon, and all other proper costs, charges, commissions and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Rose R. Whyte her heirs and assigns, at her or their cost.

And upon this further trust, upon any default or failure being made in the payment of the said promissory notes *it* either of them, or of any instalment of principal or interest thereon, when and as the same shall become due and payable, or any proper cost, charge, commission or expense in and about the same, then and at any time thereafter, to sell the said described land and premises, at public auction, upon such terms and conditions, at such time and place and after such previous public advertisement as the party of the second part his heirs, or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee-simple to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales: Firstly, to pay all proper costs, charges and expenses, including all taxes, general and special, due upon said land and premises at time of sale, and to retain as compensation a commission of five per centum on the amount of the said sale or sales; secondly, to pay whatever may

then remain unpaid of the said note and the interest thereon,
14 whether the same shall be due or not, and lastly, to pay the remainder of said proceeds, if any there be, to said parties of the first part their heirs or assigns.

And the said parties of the first part do hereby agree at their own cost, during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled, to keep the said improvements insured against loss by fire, in the name and to the satisfaction of the party of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and also to pay all taxes and assessments, both general and special, that may become due on, or be assessed against, said land and premises during the continuance of this trust, and that upon any default or neglect to so insure, or pay taxes and assessments, any party secured hereby may have said improvements insured and pay said taxes and assessments, and the expense thereof

shall be a charge hereby secured and bear interest at the same rate as the said indebtedness hereby secured.

In testimony whereof, the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

ROSE R. WHYTE. [SEAL.]
THOMAS D. WHYTE. [SEAL.]

Signed, sealed and delivered in the presence of—
CHARLES W. DARR.

15 DISTRICT OF COLUMBIA, *To wit* :

I, Chas. W. Darr, a notary public in and for the said District, do hereby certify that Rose R. Whyte and Thomas D. Whyte, her husband, who *being* personally well known to me as the grantors in and the persons who executed the foregoing and annexed deed, bearing date on the twenty-fifth day of August, A. D. 1892, personally appeared before me, in said District, and acknowledged the said deed to be their act and deed; and the said Rose R. Whyte, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed and declared that she willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this twenty-fifth day of August, A. D. 1892.

[SEAL.]

CHAS. W. DARR,
Notary Public, D. C.

Endorsed.

Received for record on the 25th day of August, A. D. 1892, at 2.20 o'clock p. m., and recorded in Liber No. 1713, at folio 377 *et seq.*, one of the land records for the District of Columbia, and examined by—

B. K. BRUCE, *Recorder.*

16 *Rule to Show Cause.*

Filed October 1, 1901.

In the Supreme Court of the District of Columbia.

GEORGE SPRANSY, Complainant,	}	Equity. No. 22650.
<i>vs.</i>		
ROSE R. WHYTE ET AL., Defendants.		

Upon consideration of the bill and affidavits filed in the above-entitled cause, it is by the court, this first day of October, A. D. 1901, adjudged and ordered that the said defendants, Rose R. Whyte and Thomas D. Whyte, show cause, if any they have, on or before Mon-

day, October 7th, A. D. 1901, at 10 o'clock a. m., why a receiver or receivers should not be appointed to take charge of the property mentioned in the bill filed in the above-entitled cause: Provided a copy of this order be served on them on or before Thursday, October 3rd, 1901.

A. B. HAGNER,
Asso. Justice.

Marshal's Return.

Served copy of within order on defendants as follows:

Rose R. Whyte, October 1, 1901.

Thomas D. Whyte, October 2, 1901.

AULICK PALMER, *Marshal.*

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Answer of Rose R. Whyte.

Filed October 14, 1901.

In the Supreme Court of the District of Columbia.

GEORGE SPRANSY

vs.

ROSE R. WHYTE and THOMAS WHYTE.

} Equity. No. 22650.

The separate answer of Rose R. Whyte, a married woman, to the bill of complaint in the above cause.

This defendant, not waiving the many defects, informalities, and want of jurisdiction in this court, as disclosed by the bill of complaint, and claiming the same right and defence as if she had specifically demurred thereto, says:

1st and 2nd. She admits the paragraphs one and two of said bill.

3rd. As to paragraph three, this defendant admits that she did execute a certain deed of trust to secure of Joseph Spransy on August 25th, 1892, and that the same was made to secure two notes, one of three and the other of five thousand dollars, as therein set forth, but the date of the delivery of said deed of trust this defendant cannot state, nor can she state whether or not said deed of trust was recorded on August 25th, 1897; and, further answering, this defendant says that no part of the amount of money mentioned in said deed of trust was ever advanced or paid to her, though she is advised that it was paid to her husband, Thomas D. Whyte.

4th. This defendant also admits that interest was paid
18 upon said indebtedness until August, 1899, and that no part of the principal of said notes *were* paid. She admits on information and belief that the property described in the deeds filed with the bill was offered for sale and bid in by the complainant on August 17th, 1901, and that the amount of such bid was ten thousand dollars (\$10,000.00), but whether or not he ever paid said sum or any sum this defendant cannot say, as the trustee, Samuel

Cross, has rendered her no statement of such sale, nor has he ever notified her that the property had been sold; and, further answering, this defendant says that she was absent from the city at the time it is said the property was sold and personally she knows nothing of such sale.

This defendant, not being informed in relation to the remaining allegation in said paragraph, can neither admit or deny same, but calls for strict proof so far as the same may be material.

5th. This defendant can neither admit nor deny that the complainant is the owner of the fee-simple of the property described in the deeds or exhibits filed in this cause, as that is a question of law as well as one of fact. She therefore calls for strict proof of all matters in relation thereto. Whether the deed of trust referred to as having been executed by her was so executed she cannot say; there being no description of any property in the bill of complaint and not having seen or examined the exhibit referred to, she cannot admit that she signed same. She therefore calls for strict proof thereof. She is now in possession of the part of lot four (4), in square two hundred and thirty-nine (239), known as premises 1329

19 R street N. W., but denies that any demand was ever made upon her for possession of property until the filing of the ejectment suit mentioned in the bill of complaint, at which time she also received notice of this suit.

This defendant denies, however, that the complainant has a right to oust her from the possession of the property until he has established his title at law, and she also denies that he is entitled to the rent and profits of same. This defendant calls for strict proof of all other material allegations in said paragraph.

6th. The defendant denies that she is insolvent, for she says that she is not indebted to any person, excepting for the amount that was covered by the deed of trust referred to in paragraph three of the bill under which the alleged sale took place, if she is liable for that, which she in no way admits. This defendant says that whether she has or has not paid interest upon said notes of three and five thousand dollars as set forth in paragraph six is immaterial, and is advised that she need make no further answer to same. This defendant can neither admit or deny the remaining allegation in said paragraph six; therefore calls for strict proof of same.

And, further answering, this defendant says that the amount alleged to have been paid for said property is a great deal less than its value; that the trustee and the complainant well knew that said property was worth a great deal more than the price alleged to have been paid for same by the complainant, and in support of her contention she herewith files the affidavits of three persons who are familiar with the property and its location and with the value of same property.

20 That the time said property was offered for sale, to wit, in August, 1901, was the most unfavorable time of the year it could have been offered, for many persons that would have been likely to bid upon and purchased said property were then ab-

sent from the city, all of which the complainant was aware of; that she had no personal knowledge of such sale or that it would take place during the month of August; that she is advised that there was scarcely any attendance at the sale, and that the property was knocked off on the second bid, while the complainant and said trustee, Cross, well knew that the price was grossly inadequate.

That if the complainant owns said house, as he claims, which this defendant specifically denies, he has good and adequate security for his investment, and there is no danger whatever of any loss on his part.

This defendant denies the right of the complainant to have a receiver appointed to take possession of said property, for this would, in effect, deprive her of her constitutional right to a trial by jury of the issue of fact that may be raised in said action of ejectment.

And, further answering, the defendant says she is advised that this suit, if the court has jurisdiction to entertain same at all, was prematurely brought.

She specifically denies that the complainant is entitled to the rents and profits, or that he is entitled to the relief prayed or any relief whatever against this defendant; and, having fully answered, this defendant prays to be hence dismissed.

ROSE R. WHYTE.

LEO SIMMONS,
Sol'r for Def't.

21 I, Rose R. Whyte, being first duly sworn, on oath depose and say that I have read over the foregoing answer by me subscribed and know the contents thereof; that the matters and things therein stated of my personal knowledge are true, and those stated upon information and belief I believe to be true.

ROSE R. WHYTE.

Subscribed and sworn to before me this 5th day of October, 1901.

[SEAL.]

GEORGE C. AUKAM,
Notary Public, D. C.

DISTRICT OF COLUMBIA, ss:

Personally appeared George F. Graham, and, being duly sworn, says he is now engaged in the real-estate business in the District of Columbia, and has been so engaged for the past fifteen years; that he is very well posted upon values of real estate in the District of Columbia, especially in the northwest section of the city; that he knows the location of house No. 1329 R street N. W. very well, having lived nearly opposite of same, on said R street, for about nine years; that he has full knowledge of the arrangement and dimensions of same, and in his opinion the lot on which said house is built (25 x 95 feet) is well worth \$5,600; that he is reliably advised that the building No. 1329 R street has cost \$8,500, and that it would

cost from \$9,000 to \$10,000 to reproduce it at this time.
 22 Deponent of his own knowledge of the value of the ground
 and the aforesaid information as to cost and value of the
 house says that the value of the property today is \$14,000, and that
 under favorable circumstances it should sell for that sum or more.
 GEO. F. GRAHAM.

Subscribed and sworn to before me this seventh day of October,
 1901.

[SEAL.]

HERBERT A. GILL,
Notary Public, D. C.

DISTRICT OF COLUMBIA, ss :

Personally appeared Louis H. Emmert, and, being duly sworn,
 says that he has been engaged in business, as contractor and practical
 builder, in the District of Columbia, on a very large scale, for the
 past twenty years, and has constructed a great number of buildings
 of various kinds in said District; that he has also owned a great
 deal of real estate in said District, and is well posted upon values of
 same; that he is familiar with the location of premises No. 1329 R
 street N. W., part of lot four (4), in square two hundred and thirty-
 nine (239), the same being now occupied by Mrs. Rose R. Whyte;
 that said house was constructed by affiant's firm, Emmert & Heisley,
 in 1892, the same being a large, attractive, three-story and cellar,
 substantial brick and stone building, 25 x 65, and is situated on the
 north side of R street between 13th and 14th streets, with lot 25 x
 95 to large paved alley; that he is of opinion and so states
 23 that said property is fully worth \$15,000.00 and should sell
 for as much under favorable circumstances.

That the cost of construction of such a house at the present time
 would be at least ten thousand dollars.

LOUIS H. EMMERT.

Sworn and subscribed to before me this 7th day of October, 1901.

[SEAL.]

M. LEROY GOUGH,
Notary Public.

DISTRICT OF COLUMBIA, ss :

Personally appeared Lewis S. Smith and, being duly sworn, says
 that he is a resident of the District of Columbia, and has been en-
 gaged in the real-estate business in said District for the past twelve
 years.

That he is—well posted upon values of real estate in the District of
 Columbia as any one could well be, especially in the northwest sec-
 tion of the city; that he is familiar with the location of house No.
 1329 R street N. W., part of lot four (4), in square two hundred and
 thirty-nine (239), having sold the land upon which said house now
 stands (a lot 25 x 95 to a large alley), to Mrs. Rose R. Whyte, in
 February, 1892, for which she paid the sum of five thousand and

six hundred dollars (\$5,600.00); that the house upon said lot is a large three-story and cellar brick and stone dwelling, 25 x 65, and the same is well and substantially built, apparently of the best materials; that he is of the opinion and so states that said property is worth fourteen thousand dollars (\$14,000.00), and under favorable circumstances it should, at least, sell for such amount or a
 24 thousand dollars more.

LEWIS S. SMITH.

Subscribed and sworn to before me this 7th day of October, A. D. 1901.

[SEAL.]

GEORGE C. AUKAM,
Notary Public, D. C.

Answer of Thomas D. Whyte.

Filed October 14, 1901.

In the Supreme Court of the District of Columbia.

GEORGE SPRANSY	}	Equity. No. 22650.
<i>vs.</i>		
ROSE R. WHYTE and THOMAS D. WHYTE.		

The separate answer of Thomas D. Whyte to the bill of complaint in the above cause.

This defendant, not waiving the many defects, informalities, multifariousness, and want of jurisdiction in this court, as disclosed by the bill of complaint, and claiming the same right and defence as if he had specifically demurred thereto, says:

1 and 2. He admits the paragraphs one and two of said bill.

3. As to paragraph three, this defendant admits that he with his codefendant did execute a certain deed of trust to secure one Joseph Spransy on August 25th, 1892, and that the same was made to secure two notes, one of three and the other of five thousand
 25 dollars, as therein set forth, but the date of the delivery of said deed of trust this defendant cannot state, nor can he state whether or not said deed of trust was recorded on August 25th, 1897.

4. This defendant also admits that interest was paid upon said indebtedness until August, 1899, and that no part of the principal of said notes *were* paid. He admits on information and belief that the property described in the deeds filed with the bill was offered for sale and bid in by the complainant on August 17th, 1901, and that the amount of such bid was ten thousand dollars (\$10,000.00); but whether or not he ever paid said sum this defendant cannot say, as the trustee, Samuel Cross, has rendered no statement of such sale to himself or wife; the defendant denies that he instructed the trustee to sell said property.

This defendant, not being informed in relation to the remaining

allegation in said paragraph, can neither admit nor deny same, but calls for strict proof so far as the same may be material.

5. This defendant can neither admit or deny that the complainant is the owner in fee-simple of the property described in the deeds or exhibits filed in this cause, as that is a question of law as well as one of fact; he therefore calls for strict proof of all matters in relation thereto. Whether or not the deed of trust referred to as having been executed by him was so executed he cannot say; there being no description of any property in the bill of complaint and not having seen or examined the exhibits referred to, he cannot admit that he signed same; and, further answering, he says his wife, Rose R. Whyte, is now in possession of part of lot four
26 (4), in square two hundred and thirty-nine (239), known as premises No. 1329 R street N. W., but denies that any demand was ever made upon her for possession of the property until the filing of the ejectment suit mentioned in the bill of complaint; and, further answering, he says he has no interest in the property other than as husband of his codefendant.

This defendant denies, however, that the complainant has a right to oust either himself or the said Rose R. Whyte from the possession of the property until he has established his title at law, and he also denies that he is entitled to the rent and profits of same. This defendant calls for strict proof of all other material allegations in said paragraph.

6. This defendant denies that he is insolvent. This defendant says that whether the interest was paid upon said notes of three and five thousand dollars, as set forth in paragraph six, is immaterial, and is advised that he need make no further answer to same. This defendant can neither admit or deny the remaining allegation in said paragraph six; therefore calls for strict proof of same.

And, further answering, this defendant says that the amount alleged to have been paid for said property is a great deal less than its value; that the trustee and the complainant well knew that said property was worth a great deal more than the price alleged to have been paid for same by the complainant.

That the time said property was offered for sale, to wit, in August, 1901, was the most unfavorable time of the year it could have been offered, for many persons that would have been likely to bid upon
and purchase said property were then absent from the city,
27 all of which the complainant was aware of. He is advised that there was scarcely any attendance at the sale, and the property was knocked off on the second bid, while the complainant and said trustee, Cross, well knew that the price was grossly inadequate.

That if the complainant owns said house, as he claims, he has good and adequate security for his investment, and there is no danger whatever of any loss on his part.

This defendant denies the right of the complainant to have a receiver appointed to take possession of said property.

And, further answering, the defendant says that he is advised

that this suit, if the court has jurisdiction to entertain same at all, was prematurely brought.

He specifically denies that the complainant is entitled to rents and profits, or that he is entitled to the relief prayed, or any relief whatever against this defendant; and, having fully answered, this defendant prays to be hence dismissed.

THOMAS D. WHYTE.

LEO SIMMONS, *Sol'r*.

I, Thomas D. Whyte, being first duly sworn, on oath depose and say that I have read over the foregoing answer by me subscribed and know the contents thereof; that the matters and things therein stated of my personal knowledge are true, and those stated upon information and belief I believe to be true.

THOMAS D. WHYTE.

28 Subscribed and sworn to before me this 7th day of October, 1901.

[SEAL.]

GEORGE C. AUKAM,
Notary Public, D. C.

Order Appointing Receiver.

Filed October 22, 1901.

In the Supreme Court of the District of Columbia, Holding an Equity Term.

GEORGE SPRANSY, Complainant,	} Equity. No. 22650.
<i>vs.</i>	
ROSE R. WHYTE ET AL., Defendants.	

This cause coming on to be heard upon the bill, affidavits attached thereto, the answer of defendants, affidavits, and rule to show cause why a receiver should not be appointed, it is by the court, this twenty-second day of October, A. D. 1901, adjudged, ordered, and decreed that Irving Williamson be, and he is hereby, appointed receiver in the above-entitled cause to take immediate possession of the property mentioned in the bill and exhibits filed therewith, the same being part of lot four (4), in W. W. Corcoran's subdivision of square two hundred thirty-nine (239), as said subdivision is recorded in the office of the surveyor of the District of Columbia in Book W. F., page 142, beginning for the same at the southwest corner of said lot, and running thence east along the line of North R street twenty-five (25) feet; thence north ninety-five (95) feet; thence west twenty-five (25) feet; thence south ninety-five (95) feet to the place of beginning, and all buildings erected thereon, the said defendants and each of

29 them being hereby ordered to immediately surrender the same, and that after taking possession of the same he shall

rent the same at a property rent, and do such other acts as may be necessary for the purpose of collecting the rents and profits derived from said property, and preserve said property and said rents until the determination of the ejectment suit set out in these proceedings or further order of the court; said receiver before he enters upon the administration of his trust to execute a bond in the sum of fifteen hundred dollars for the faithful performance of his trust.

A. B. HAGNER,
Asso. Justice.

From this decree defendants appeal to the Court of Appeals, and the same is hereby allowed; the bond to act as a supersedeas is fixed at fifteen hundred dollars, or a bond for costs only is fixed at two hundred dollars.

A. B. HAGNER, *Justice.*

October 22, 1901.

30 *Order for Preparation of Record on Appeal.*

Filed October 24, 1901.

In the Supreme Court of the District of Columbia.

GEORGE SPRANSY	} Equity. No. 22650.
vs.	
ROSE R. WHYTE ET AL.	

The clerk in preparing the transcript of the record for appeal in this case will include only the following papers, viz:

Bill and affidavits attached, filed Oct. 1st, 1901.

Exhibit A (which is a deed of trust), filed Oct. 1st, '01.

Rule to show cause, passed Oct. 1st, '01.

Answer of Rose R. Whyte, and affidavits attached, filed Oct. 14th, 1901.

Answer of Thomas D. Whyte, filed Oct. 14th, 1901.

Decree appointing receiver and allowing appeal, passed Oct. 22nd, 1901.

LEO SIMMONS,
Attorney for Appellant.

Memorandum.

November 11, 1901.—Appeal bond filed.

31 UNITED STATES OF AMERICA, }
District of Columbia, } ss:

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 30, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 22650, equity, wherein George Spransy is complainant and Rose R. Whyte *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, in said District, this
Columbia. 25th day of November, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1150. Rose R. Whyte *et al.*, appellants, vs. George Spransy. Court of Appeals, District of Columbia. Filed Dec. 12, 1901. Robert Willett, clerk.

